IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 62 of 2002

The Commissioner of Income-Tax
Dehradun and another … Appellants

Versus

Sedco Forex International Drilling Inc.
as Agent of Mr. J. E. Lesuik,
C/o A.F. Ferguson & Company C. As
Maker Tower E Cuffe Parade,
Bombay-400 005 … Respondent

Mr. S.K.Posti, Advocate for the appellants.

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble J.C.S. Rawat, J.

JUDGMENT

CYRIAC JOSEPH, C.J. (Oral)

This appeal is filed against the order dated 31.05.2001 passed by the Income Tax Appellate Tribunal, Delhi Bench-D, New Delhi in I.T.A. No. 7344/Del/95. The assesse is Mr. J.E. Lesuik, represented by Sedco Forex International Drilling Inc. The dispute relates to the Assessment Year 1992-93. The appellants are (i) the Commissioner of Income Tax, Dehradun and (ii) the Assistant Commissioner of Income Tax, Special Range, Dehradun.

2. The substantial questions of law raised in the appeal are the following:

(i) "Whether on the facts and in the circumstances of the case the ITAT was legally correct to hold that the salary paid to the assessee for the "off period" outside India was no chargeable to Indian Income Tax Act in terms of section 9(1)(ii) of the Income Tax Act, 1961, whereas the learned ITAT has itself held vide orders dated 25.03.1992 in I. T. A. No. 5649/ D/92, dated 28.07.1999 in I. T. A. No. 1079/D/91, dated 24.1.2000 in I. T. A. No. 411/D/93 and dated 15.5.2000 in I. T. A. No. 1648/D/94 that "off-period salary" is taxable in India and vide order dated

18.11.1996 in R.A.No. 433 to 511/D/96 has referred question of law on this issue for esteemed opinion of Hon'ble Allahabad High Court.?"

(ii) "Whether on the facts and in the circumstances of the case the ITAT was legally correct in holding that free boarding facility provided by the employer at the rig side cannot be construed to be perquisite?

(iii) "Whether on the facts and circumstances of the case the ITAT was legally justified in allowing the appeal of the assessee holding that interest u/s 234 B was not leviable in respect of incomes which are subject to deduction of tax at source?

3. In Commissioner of Income Tax- and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320, a Division Bench of this Court has held that the payment of salary for "off period" was income earned in India, i.e. for services rendered in India under Section 9(1)(ii) and that "off period salary" was taxable under section 9(1)(ii) of the Income Tax Act, 1961. It has been further held that the free boarding facility provided by the employer on the rig was not a perquisite under Section 17 (2)(iii) and that its value cannot be added to the income of the assessee. It has also been held that the imposition of interest u/s 234 B was not justified without hearing and without reasons.

4. Following the above mentioned judgment of a Division Bench of this Court, this appeal is partly allowed answering the first question of law in favour of the appellants. The second and third questions of law are answered against the appellants and in favour of the assessee and this appeal will stand dismissed to the extent.

(J.C.S. Rawat, J.)
08.09.2005

(Cyriac Joseph, C.J.)
08.09.2005

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